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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON

7 JOHN BURTON,

8 Plaintiff,

9 v.

10 CITY OF SPOKANE, *et al.*,

11 Defendants.
12

NO. CV-06-322-RHW

**ORDER DENYING MOTION TO
VACATE JUDGMENT/ORDER**

13 Before the Court is Plaintiff's Motion to Vacate Judgment/Order (Ct. Rec.
14 257). The motion was heard without oral argument.

15 Plaintiff asks this Court to vacate the judgment issued in the above-
16 captioned based due to concealment of evidence and newly discovered evidence
17 not previously brought for the Court's consideration. In his motion, Plaintiff cites
18 to Fed. R. Civ. P. 60(b)(2),(3). Such a motion, however, must be filed within one
19 year of the judgment. *See* Fed. R. Civ. P. 60(c)(1). As such, Plaintiff's motion is
20 untimely.

21 Plaintiff also argues that his Sixth Amendment right to counsel was violated
22 and he was denied effective assistance of counsel, when his counsel failed to bring
23 to the Court's attention that Defendant Bowman had committed perjury when he
24 provided information in his Affidavit, which is the basis of Plaintiff's current
25 Motion to Vacate Judgment. Plaintiff does not have a Sixth Amendment right to
26 effective assistance of counsel in a civil matter seeking money damages from state
27 officials. *See United States v. \$292,888 in U.S. Currency*, 54 F.3d 564, 569 (9th
28 Cir. 1995). Even so, it is recognized that gross attorney negligence can be a basis

1 for relief under Rule 60(b)(6). *Cnty. Dental Servs. v. Tani*, 282 F.3d 1164, 1169
2 (9th Cir. 2002). A motion made under Rule 60(b)(6) must be made within a
3 reasonable time. Fed. R. Civ. P. 60(c)(1).

4 Here, it appears that Plaintiff is relying on testimony given by Defendant
5 Bowman in the criminal proceeding in state court. There are no dates provided as
6 to when this testimony was given. In reviewing the record, it appears that Plaintiff
7 was convicted of delivery of a controlled substance prior to the filing of his civil
8 action, and thus, the testimony of Defendant Bowman at issue would have been
9 given prior to the filing of the civil action. Even if the Court were to believe
10 Plaintiff that Defendant Bowman perjured himself, this evidence was not newly
11 discovered evidence that could not have been discovered with reasonable diligence
12 at the time the civil action was filed, or at the latest, prior to when judgment was
13 entered in this case.

14 Plaintiff's Motion to Vacate is untimely and not made within a reasonable
15 time. In addition, Plaintiff has failed to show that his attorney's conduct in
16 connection with his case constituted an extraordinary circumstance beyond his
17 control. As such, Rule 60 relief is not appropriate. *See Karraker v. Rent-A-Center,*
18 *Inc.*, 411 F.3d 821, 837 (7th Cir. 2005) ("Rule 60(b)(6) . . . is not an appropriate
19 place to slip in arguments that should have been made earlier.").

20 Accordingly, **IT IS HEREBY ORDERED:**

21 1. Plaintiff's Motion to Vacate Judgment/Order (Ct. Rec. 257) is **DENIED**.

22 **IT IS SO ORDERED.** The District Court Executive is directed to enter this
23 Order, forward copies to counsel, and **close the file**.

24 **DATED** this 4th day of March, 2011.

25
26 *s/Robert H. Whaley*

27 ROBERT H. WHALEY
28 United States District Judge

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